It is this critical aspect of the monopoly LEC's network -- the fact that it, and it alone, can offer the scale and scope (and resulting lower unit costs) -- that underlies the unbundling and resale obligations of Section 251 of the 1996 Act.[39] If emerging competitors are forced to replicate the ILECs' networks from scratch -- especially when they start with no embedded customer base -- they will never be able to enter the market with competitive offers and competitive prices.

Bell Atlantic is well aware of the leveling effect of Section 251's pricing requirements. It is precisely to take advantage of its inherent economic advantages that Bell Atlantic asks that it be relieved entirely from any resale and unbundling obligation. However, the very purpose of Section 251 is to require the ILECs to share their network efficiencies with their potential competitors. This is entirely appropriate, because the ILECs developed and deployed their networks on monopoly revenues. Although Bell Atlantic boasts that almost 94 percent of its switches are digital, it has SS7 capability on at least 94 percent of its lines, and it has deployed packet-switching capabilities in nearly 40 percent of its end offices,[40] it neglects to mention that all of these improvements have been funded by protected revenues from local exchange and exchange access services. Freed of the Section 251 unbundling and resale obligations, Bell Atlantic could load the

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[39] See First Report and Order, ¶ 679 ("Congress recognized in the 1996 Act that access to the incumbent LECs' bottleneck facilities is critical to make meaningful competition possible. As a result of the availability to competitors of the incumbent LEC's unbundled elements at their economic cost, consumers will be able to reap the benefits of the incumbent LECs' economics of scale and scope, as well as the benefits of competition.")

[40] Id. at Attachment 2, pp. 43-48.

bulk of its network costs onto its regulated entity, continue to receive monopoly returns on those costs, and price its advanced telecommunications services to its end user customers on the basis of incremental cost alone.[41] At the same time, it would not have to offer the "advanced" UNEs or wholesale services at all to its competitors (let alone at cost-based rates). This would eliminate any possibility of local competition in Bell Atlantic's territory, leaving Bell Atlantic free to offer less desirable services at inflated prices.[42] Such a result is plainly contrary to the overarching mandates of the Act and any notion of the "public interest."[43]

### B. Extending Bell Atlantic's Market Power Into InterLATA Internet Services Will Not Create A More Competitive Internet Backbone Market.

Allowing Bell Atlantic to provide interLATA Internet services will not create a more competitive market for Internet backbone services. Bell Atlantic's purported justification for its request -- that the Internet backbone suffers from severe

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41 Petition at Attachment 2, p. 15.

42 Notwithstanding the relative ease of deployment of ISDN for an ILEC such as Bell Atlantic, the ILECs have been painfully slow in implementing this 20-year-old technology in their territories. Accord In The Matter of Usage of the Public Switched Network by Information Service and Internet Service Providers, CC Docket No. 96-263, Comments of Internet Access Coalition, March 24, 1997, pp. 23-25.

43 In stark contrast, the interexchange marketplace offers these same technologies -- stimulated by a robust competitive market and not cushioned by monopoly revenues. These healthy investment decisions -- and their associated risks and rewards -- should not be distorted by allowing an incumbent monopolist to leverage that power and stifle emerging local competition, let alone to leverage that power into the interexchange market (see Section III.B, infra).

network congestion and Bell Atlantic's entry into that market would solve that capacity problem -- is not accurate on either count.

Any congestion on the Internet backbone facilities pales in comparison to the degraded throughput that users experience due to choke points in the local network resulting from the ILECs' failure to upgrade their local facilities to accommodate broadband services. Indeed, Bell Atlantic is one of many ILEC commenters that warned the Commission of the threat of local "network congestion" as a result of the paucity of packet-switched local access alternatives.[44]

Bell Atlantic's own White Paper explains that congestion can occur in the local access facilities, the Internet Service Provider's ("ISP's") equipment or interconnection facilities to the Internet backbone, and specific websites and connections to the websites, as well as on the Internet backbone transport facilities. As to the Internet backbone, congestion primarily occurs at the Internet Network Access Points ("NAPs"),[45] where peering arrangements (or the lack thereof) can cause Internet connections to fail. Congestion on the Internet backbone's transport and routing facilities themselves is only

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[44] In the Matter of Usage of the Public Switched Network by Information Service and Internet Access Providers, CC Docket No. 96-263, Joint Comments of Bell Atlantic and NYNEX on Notice of Inquiry, March 24, 1997. The longstanding "temporary" exemption from payment of access charges accorded to enhanced service providers has certainly sent the wrong economic signals to both ISPs and ILECs, the latter of which are understandably reluctant to upgrade their networks so long as ISPs can continue to utilize the circuit-switched local network at discounted, non-usage sensitive prices.

[45] Petition at Attachment 2, pp. 5-27.

one minor source of strain on the Internet, and is not a problem that requires entry by a monopoly RBOC to solve.

Current backbone providers are capable of expanding their networks, and are doing so today with significant new investments. For example, MCI and UUNet quadrupled their backbone capacity in 1997[46], and the major backbone providers have plans to quadruple capacity again.[47] Dense wavelength division multiplexing is lowering the cost of fiber by orders of magnitude[48] and switching prices are falling rapidly. However, it takes time to install additional capacity, and the pace of Internet growth has

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46 MCI spent $60 million to increase its backbone links from OC-3 (155 million bits per second ("Mbps") to OC-12 (622 Mbps) (see Newsbytes, March 18, 1996). UUNet invested $300 million upgrading its networks (see Interactive Week, February 14, 1997).

47 "Sprint Dramatically Boosts Speed and Bandwidth on its Internet Network," Sprint Press Release, September 3, 1997 ("By deploying the Cisco 12,000 series [of router], Sprint will increase bandwidth 400 percent by running live traffic over full-line speed OC-12 connections. . ."). In late 1997, AT&T itself introduced and invested in the first phase of a robust IP backbone designed to deliver both dedicated and dial-up IP-based services. See "AT&T IP Backbone: Giving Business the Edge," October 1997, www.att.com. Commissioner Ness has acknowledged that "this is an area in which multiple providers are making massive investments to meet burgeoning demand." Remarks of Commissioner Susan Ness before the WashingtonWeb Internet Policy Forum ("Ness Remarks"), Washington, D.C., February 9, 1998, p. 6.

48 "Chairman Unveils Plans to 'Future Proof' AT&T Network," AT&T Press Release, January 26, 1998 ("DWDM technology – which uses light to magnify transmission – makes it possible for us to increase the transport capacity of our existing network by a factor of 10, without having to lay any additional fiber-optic cable").

outstripped the network's ability to add new capacity quickly enough to handle the demand.[49]

Bell Atlantic's claim that congestion on the Internet backbone's transport facilities has slowed transmission speeds to 40 Kbps is far from accurate.[50] There is ample evidence that the Internet is fully capable of carrying traffic at speeds that well exceed 40 Kbps. AT&T's own cable modem trials were conducted at average speeds of 400-700 Kbps. The cable ISP, @ Home, advertises that it typically operates at speeds in the range of 1,500-3,000 Kbps.[51] Time Warner's cable modem service in San Diego also operates at significantly higher speeds -- 10 Mbs downstream and 1.5 Mbs upstream -- which Time Warner claims that its users are fully capable of achieving.[52] The ubiquity of these successful broadband trials confirms the availability of the average speeds over the Internet backbone well above the maximum available over standard analog phone lines (i.e., 56 Kbps), and strongly suggests that any congestion experienced by customers is in the ILECs' local loops, which plainly have not been upgraded to meet demand. Finally, the Keynote System Inc. Backbone Performance Index quoted by Bell Atlantic is highly controversial. According to press reports, "many Internet providers felt the methodology

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[49] Moreover, router technology is not keeping up with the speed capabilities of the transport facilities being installed.

[50] Petition at 13 and Attachment 2, p. 22.

[51] See www.home.net.

[52] BancAmerica Robertson Stephens – Network Hardware Research Group, "The First Mile – Release 1.4," February 23, 1998.

was flawed -- namely that it tested only server speed -- the speed at which a server uploads data onto the Net -- and not the speed at which data travels through the backbone."[53]

Of greater concern is the breakdown of the peering structure, which is the system of agreements between Internet backbone providers for the interconnection of their networks and the exchange of traffic. As traffic continues to increase exponentially on the Internet, a major source of congestion occurs at the NAPs, where backbone providers exchange traffic. In particular, Metropolitan Access Exchanges ("MAEs") at MAE East and MAE West, through which 70 percent of all Internet traffic transits, are severely strained.[54] As a result, backbone providers are moving toward private peering arrangements, in effect directly connecting with each other to bypass these crowded crossroads. The refusal of a large Internet backbone provider -- especially one with emerging market power such as WorldCom/UUNet, and the proposed WorldCom/MCI merged company -- to execute a peering agreement can prevent a small ISP from gaining direct connectivity to the larger provider's customer base, including popular websites.[55]

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53 Inter@ctive Week, "Backbone Survey Takes on Keynote," February 23, 1998. One Internet access provider, Net Access Inc., plans to use different methodology to measure Internet backbone performance; the results of this study, expected this month, should be materially different. See www.netperf.net (announcement of NetAccess Internet Performance Measurement Study).

54 See, e.g., HPPC Week, December 22, 1997, p. 4.

55 Public peering is not a sufficient substitute for private peering, which offers several significant service advantages. The disparity in service quality between public and private peering will be further exacerbated until backbone carriers upgrade their interconnections to public NAPs to alleviate congestion.

Although Bell Atlantic acknowledges these concerns,[56] it does not explain either generally how its entry into the Internet backbone market would alleviate these problems, or specifically why Bell Atlantic is so uniquely qualified to address these issues that the Commission should exempt it from regulatory and statutory competitive safeguards to permit it to provide interLATA Internet services. What the Commission can learn instead from the competitive problems that are cropping up in the Internet market is that when a provider gains market power, it will seek to dictate the terms of access to its facilities to its competitors. This is precisely the situation that exists in the local exchange market today, and is the reason for the adoption of the interconnection, access, and resale provisions of the 1996 Act -- the very provisions from which Bell Atlantic is seeking relief here.[57]

In fact, Bell Atlantic has elsewhere acknowledged as much in its opposition to the proposed WorldCom/MCI merger.[58] There, Bell Atlantic has argued that the

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[56] See Petition at Attachment 2, pp. 28-33.

[57] See generally S. Conf. Rep. No. 458, 104th Cong., 2d Sess. p. 248 ("New subsection 251(a) imposes a duty on local exchange carriers possessing market power in the provision of telephone exchange service or exchange access service in a particular local area to negotiate in good faith and to provide interconnection with other telephone exchange service or exchange access service;" H. Conf. Rep. No. 458, 104th Cong., 2d Sess. pp. 254-55 (1996) ("Section 242(a)(1) [of the House amendment] sets out the specific requirements of openness and accessibility that apply to LECs as competitors enter the local market and seek access to, and interconnection with, the incumbent's network facilities").

[58] In its petition in opposition to WorldCom's application for transfers of MCI's operating authority, Bell Atlantic has acknowledged that "it is difficult to switch from one backbone provider to another" and that "[n]ew capacity is useless unless

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merged entity could exert monopoly power over Internet backbone facilities, and has stated that the appropriate relief would be the adoption and enforcement of conditions on the merger similar to the requirements of Section 251.[59]

So long as Bell Atlantic retains a dominant market position in the local exchange, its entry into the interexchange market has much more potential to impede competition than foster it. Bell Atlantic is unabashed in its plans to leverage its market power. According to Bell Atlantic, allowing it to provide Internet backbone services

> would expand Bell Atlantic's ability to sell other complementary products to consumers. These include not just xDSL services, but also the second or third lines that consumers often seek for their Internet services. Additional incentive to invest would come from the resulting boost to Bell Atlantic's own Internet-access service itself, which has been uniquely hobbled by the fact that the customers of Bell Atlantic, unlike other providers, must obtain a separate interLATA provider.[60]

With the ability to bundle Internet services with both advanced and traditional basic telephone services (relief that Bell Atlantic implicitly requests), Bell Atlantic would foreclose competitors in each of these markets from constructing a viable

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> customers can switch to it." In the Matter of Applications of WorldCom, Inc. and Howard A. White, Trustee, for Transfers of Control of MCI Communications Corporation and Request for Special Temporary Authority, CC Docket No. 97-211, Petition of Bell Atlantic to Deny the Application of WorldCom or, in the Alternative, To Impose Conditions, filed January 5, 1998, p. 6.

[59] Id. at 2 ("First, WorldCom should be required to divest some of its Internet backbones in order to lessen its dominance of the Internet. . . . Second, the Commission should ensure that Bell Atlantic and other currently precluded long distance entrants have access on a resale basis to all network facilities and features that MCI and WorldCom currently use to service their long distance customers").

[60] Petition at 16.

competitive offer. No Internet provider or CLEC could compete with a Bell Atlantic offer of free Internet service with purchase of a DSL service. And that arrangement would not alleviate the Internet backbone congestion problem that Bell Atlantic cites as its justification to enter the market free from any restrictions on its existing market power in the local exchange.

## IV. THE REQUESTED RELIEF IS CONTRARY TO, AND WOULD UNDERMINE, CONGRESSIONAL AND COMMISSION POLICY TO PROMOTE A ROBUSTLY COMPETITIVE TELECOMMUNICATIONS MARKET.

Not only would Bell Atlantic's petition, if granted, run counter to the statutory scheme established by Congress for opening of RBOC local exchange monopolies and RBOC entry into interLATA markets as discussed in Section III above, it is entirely inconsistent with Congressional mandates, Commission policy and the public interest.

First, Bell Atlantic's broad request for special treatment for the provision of "high-speed broadband services" runs counter to the pro-competitive, technology-neutral policies of the 1996 Act. In other contexts, the Commission has adopted a technology-neutral policy to allow the marketplace to direct the advancement of competitive services.[61] In contrast, Bell Atlantic's proposal would free Bell Atlantic to direct its

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[61] See, e.g., In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, FCC 97-157, rel. May 8, 1997, ¶¶ 47-49 ("Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor one technology over another").

investment decisions to its new technology services to the detriment of its traditional services -- the latter of which would be the only ones available to its potential competitors for purchase of UNEs and for resale. Thus, both Bell Atlantic's competitors and end user customers would suffer from the lack of competitive alternatives resulting from the grant of technology-focused (and not competition-focused) relief.

Second, Bell Atlantic's claim that "Section 271 is not undermined or compromised by allowing the limited interLATA relief sought here"[62] is simply untrue. Contrary to its assertion that it is requesting "limited high-speed data relief,"[63] as discussed herein grant of the requested forbearance authority would enable Bell Atlantic to provide all telecommunications services to its customers on an interLATA basis, including voice, fax and data over the same broadband pipe. Having achieved de facto 271 relief, Bell Atlantic would have no incentive whatsoever to meet the competitive checklist to implement local entry. Bell Atlantic's self-serving assertion that it "would not have agreed to the merger commitments if its strategy were to defer achieving checklist compliance" is as meaningless as it believes its merger obligations are. As AT&T has demonstrated in its pending Section 208 complaint proceeding before the Commission, Bell Atlantic has violated its merger obligations, and its interpretation of those obligations would render them a nullity.[64]

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62 Petition at 19.

63 Id.

64 AT&T Corp. v. Bell Atlantic, File No. E-98-05, (complaint filed Nov. 4, 1997). For example, Bell Atlantic has taken the position in the complaint proceeding that its

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Furthermore, Bell Atlantic's claim that it "does not have the same alleged anticompetitive potential or unfair or special advantages entering the Internet and high-speed data market the Commission has thought Bell companies might have entering the regular long-distance market"[65] is plainly wrong. Bell Atlantic may well provide Internet access service to only a small portion of the subscribers to all Internet access services, as it claims.[66] However, it provides local service to virtually 100 percent of the Internet subscribers in its territory, and connectivity to virtually all the ISPs in its territory. Thus, every Internet access customer and virtually every ISP is also a customer of Bell Atlantic's monopoly local services. With this competitive advantage, Bell Atlantic could easily and quickly market a bundled offering to its existing customer base -- one that no ISP, CLEC, or IXC could match, especially if Bell Atlantic succeeds in having its "packet-switched" services sheltered from interconnection and resale requirements. This is directly contrary to the Commission's policy to ensure that innovative RBOC services be made available to competitive local exchange service providers:

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> obligation to propose prices for UNEs based on forward looking economic costs applies only to proposals first made after August 14, 1997, despite the fact that the Merger Order states that "Bell Atlantic's and NYNEX's proffered commitments, and the conditions we impose, are not limited to interconnection agreements that are executed after approval of the Merger." In the Applications of NYNEX Corp. Transferor and Bell Atlantic Corp. Transferee For Consent to Transfer Control of NYNEX Corp. and Its Subsidiaries, Memorandum Opinion and Order, File No. NSD-L-96-10 (Aug. 14, 1997); see also id. ¶185; id. n.347; id. Appendix C, Condition 9.

65 Petition at 20.

66 Id.

> We want to encourage the BOCs to provide new technologies and innovative information services that will benefit the public, as well as ensure that the BOCs will make their networks available for the use of competitive providers of such services.[67]

Finally, Bell Atlantic's reliance on the existence of cable, wireless and satellite services as viable competitive local service alternatives is grossly premature. Although Bell Atlantic cites press articles announcing future service offerings,[68] alternative broadband technologies are not likely to compete with any ILEC-offered DSL services in the near term. According to International Data Corporation ("IDC"), ILECs have "a fair amount of breathing room with respect to introducing DSL service" because cable companies have not been able to deploy cable modem technology either quickly or ubiquitously, obtaining only 100,000 cable modem subscribers by the end of 1997.[69] Additionally, "the cost of the required access network upgrades to support modem service will hold back wide availability of cable modem service" as cable operators install fiber in their access networks at a fixed cost that IDC estimates to be on the order of $100 billion to cover all of the cable systems in the country.[70] "Cash-strapped cable companies will require years to perform these upgrades, with the result being that cable modem service will be available only in pockets across the U. S. In contrast, DSL does not require

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67 Computer III FNPRM, ¶ 7.

68 Id. at 21-22.

69 IDC Report, "DSL Market Gains Direction," January 1998, p. 5.

70 Id.

massive investments to upgrade the access network."[71] Thus DSL can be provided on a phased basis as customers demand the service.

Any real competition from satellite and wireless companies, particularly for two-way interactive services, is still years away as well, as those technologies have yet to be developed and broadly deployed.[72] This suggests that Bell Atlantic (and the other ILECs) are in a powerful position to hold back the introduction of broadband services to business and residential customers until the emergence of real competitive alternatives, and thereby delay rather than hasten their market introduction.[73]

At bottom, Bell Atlantic has offered only half-hearted and inaccurate information to support its contention that there is any meaningful competition in the local exchange today. It has clearly offered no basis for the Commission to conclude that its ability or incentive to behave in an anticompetitive manner are in any way tempered by

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71 Id. Bell Atlantic admits the lack of competitive broadband alternatives in its own filing: "Cable and wireless providers likewise have invested far less capital, and built far less network. Cable companies have deployed few switches of any kind, and have not linked in to the nationwide digital signaling system (SS7) at all. Only 10 to 20 percent of cable subscribers are served by networks that have been upgraded to support two-way traffic. Test of cable modems are under way, and a few companies already offer commercial service, but these initiatives remain small and localized for now. Only about 15 percent of cellular networks are digital. Wireless data services remain quite limited, expensive, and slow. Cellular Digital Packet Data (CDPD) services are being rolled out slowly, and are currently used by only about 10,000 customers." Id. at Attachment 2, p. 49 (footnotes omitted).

72 IDC Report, p. 6.

73 See, e.g., Jupiter Study at 31 ("Currently, the RBOCs have a stranglehold on high-speed Internet access via leased lines by virtue of their ownership of the local loop.

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these so-called competitive alternatives, and that grant of the requested relief would not "impede other statutory policies."[74]

## V. CONCLUSION

Bell Atlantic's request, if granted, would stop competition in the local exchange market before competitors even gain a foothold; it would enable Bell Atlantic to extend its existing market power into the interexchange market, contrary to the express intent of Congress in adopting Sections 251 and 271 of the 1996 Act; and it would do nothing to address the real competitive concerns of the Internet backbone market, as Bell Atlantic has itself acknowledged. Commissioner Ness correctly noted that

> we can't simply eliminate all the rules we have today and hope for competition. As long as the incumbent local exchange carriers, and particularly the Bell Operating Companies and GTE, retain significant market power from their control over their bottleneck local loop, we will need a transitional regime to move from regulation to competition.[75]

Bell Atlantic's petition is a useful tool to analyze the wisdom of these remarks. Stripped of the superficial appeal of "bringing Internet services to the home," the petition is nothing more than a request by a monopolist to introduce new services into its existing monopoly market without any competitive safeguards, and to leverage its market power into the

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> The RBOCs will have little reason to invest in ADSL for business use until businesses have options for high-speed access besides leasing T1 and ISDN lines").

[74] Petition at 19.

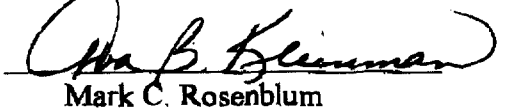
[75] Ness Remarks, p. 3.

interexchange market as well. Bell Atlantic has provided no valid justification to effect such full-scale deregulation of its services before it sheds its monopoly power.

For the reasons set forth above, Bell Atlantic's petition should be denied, including the request for expedited treatment.

Respectfully submitted,

AT&T CORP.

By 

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April 6, 1998

## CERTIFICATE OF SERVICE

I, Rena Martens, do hereby certify that on this 6th day of April, 1998, a copy of the foregoing "Comments of AT&T Corp." was served by U.S. first class mail, postage prepaid, to the parties listed below.

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